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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. ~~833~~ 36

J. E. PIERCE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONER.

L. E. GWINN,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 833

J. E. PIERCE,

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vs.

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONER.

As the record is voluminous, certain misleading statements in the Government brief seem to call for a reply.

I.

At page 7 of that brief it is said:

> "While the checks in those cases bore on their face the words 'For advertising' in petitioner's handwriting, three of the witnesses stated positively that those words were not on the checks when they signed them (R. 67, 92-93, 122).

Pertinent to the foregoing statement is the testimony of each of these three witnesses that he did not observe to whom the check was payable nor read it further than to

observe the amount for which it was payable (R. 73, 98, 99, 122, 128, 129).

II.

With respect to the refused special request, the excerpt from the charge, set out at pages 13 and 14 of the Government brief, taken from its context, is quite misleading.

The court had instructed the jury in substance that petitioner would be guilty if he claimed to represent the Government "or some department thereof" (R. 303), or claimed to have been "acting under the authority" of the Government (R. 305).

There was testimony that petitioner *referred* to the T. V. A. in his sales talks and that frequent *references* to the T. V. A. appeared in newspapers exhibited, and some testimony that petitioner claimed that he was "working in the interest of the Government" (R. 306).

The instructions at page 306, quoted in part by the Government brief, simply told the jury that a "*reference*" to the T. V. A. should not be considered as evidence of a false claim or pretense of Federal authority unless made for the purpose of inducing such belief on the part of the person to whom the representation was made, and the same instruction was also given with reference to the testimony that petitioner claimed to have been "working in the interest of the Government" (R. 306), but this instruction did not draw any line between the Government and the T. V. A. nor suggest that a false impersonation of an officer or agent of the T. V. A. did not constitute the offense for which petitioner was being tried.

There is, of course, a distinction between a "*reference*" to the Government or the T. V. A. and a claim to be an officer or an agent of either, and the instruction italicized at page 14 of the Government brief and related instructions simply told the jury that a "reference" to either was

not a false impersonation unless designed to convey the impression that petitioner was acting in an official capacity.

The qualification which the Government now insists (Br. 14) should have been included in the special request, to-wit, that any reference by petitioner to the T. V. A., if intended to convey the impression that he was an officer of the Government, would constitute a violation of the statute, was recognized and the rule applicable thereto expressly stated in the part of the charge italicized at page 14 of the Government brief. Having been stated in the general charge, there was no reason for its reiteration in the special request.

It was the contention of the Government that the "T. V. A. is an authority of the United States" (Petition for Rehearing, page 2); that of petitioner that the T. V. A. was a corporate entity separate and distinct from the Government, but the charge does not deal specifically with these contentions and, as set out in our original petition, the bulk of the Government's evidence was restricted to a claimed connection with or a representation of the Tennessee Valley Authority.

Respectfully submitted,

L. E. GWINN,
Attorney for Petitioner.